

TITLE AND ESCROW COMMISSION ACT

2008 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: R. Curt Webb

Senate Sponsor: _____

LONG TITLE**General Description:**

This bill modifies the Title and Escrow Commission Act.

Highlighted Provisions:

This bill:

- defines terms;
- provides for the issuance of letters of warnings and citations;
- provides that letters of warnings do not constitute notice of agency action or administrative proceedings;
- requires the commissioner to establish procedures related to complaints;
- provides for rulemaking by the Title and Escrow Commission, with the concurrence of the commissioner, related to standards of conduct, fines, and administrative procedures;
- addresses reporting requirements;
- addresses when the commission may hold hearings;
- addresses duties of the commission; and
- makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None



Utah Code Sections Affected:

AMENDS:

31A-2-402, as last amended by Laws of Utah 2007, Chapter 325

31A-2-404, as last amended by Laws of Utah 2007, Chapter 325

ENACTS:

31A-2-406, Utah Code Annotated 1953

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **31A-2-402** is amended to read:

31A-2-402. Definitions.

As used in this part:

(1) "Citation" means a notice of agency action issued by the commissioner to a title licensee that includes a statement of:

(a) the factual basis of a violation by the title licensee of a standard of conduct identified in rules made under Subsection 31A-2-404(2)(a)(vi);

(b) the amount of the fine imposed as a result of the violation described in Subsection (1)(a);

(c) the date by which the fine must be paid without additional penalty if the title licensee does not contest the citation;

(d) the date by which the title licensee must do the following if the title licensee contests the citation:

(i) resolve the fine by negotiation or stipulated agreement with the commissioner; or

(ii) appear at an adjudicative hearing; and

(e) any possible further action by the commissioner for failure to pay the fine.

~~[(1)]~~ (2) "Commission" means the Title and Escrow Commission created in Section 31A-2-403.

~~[(2)]~~ (3) "Concurrence" means the entities given a concurring role must jointly agree for the action to be taken.

~~[(3)]~~ (4) "Dual licensed title licensee" means a title licensee who holds:

(a) a producer license as a title licensee; and

(b) a license or certificate under:

- (i) Title 61, Chapter 2, Division of Real Estate [~~Division~~];
- (ii) Title 61, Chapter 2b, Real Estate Appraiser Licensing and Certification Act; or
- (iii) Title 61, Chapter 2c, Utah Residential Mortgage Practices Act.

(5) "Letter of warning" means a letter issued by the commissioner to a title licensee that states that:

(a) the commissioner has received a complaint against the title licensee;

(b) the facts alleged in the complaint, if true, would constitute a violation of a standard of conduct identified in rules made under Subsection 31A-2-404(2)(a)(vi); and

(c) the commissioner has decided:

(i) not to take action on the complaint at the time, but may take action on the complaint in the future; and

(ii) to maintain the complaint in the records of the department.

~~[(4)]~~ (6) "Real Estate Commission" means the Real Estate Commission created in Section 61-2-5.5.

~~[(5)]~~ (7) "Title licensee" means a person licensed under this title as:

- (a) an agency with a title insurance line of authority;
- (b) a producer with:
- (i) a general title insurance line of authority; or
- (ii) a specific category of authority for title insurance; or
- (c) a title insurance adjuster.

Section 2. Section **31A-2-404** is amended to read:

31A-2-404. Duties of the commissioner and Title and Escrow Commission.

(1) Notwithstanding the other provisions of this chapter, to the extent provided in this part, the commissioner shall administer and enforce the provisions in this title related to:

- (a) title insurance; and
- (b) escrow conducted by a title licensee or title insurer.

(2) The commission shall:

(a) in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, and subject to Subsection (3), make rules for the administration of the provisions in this title related to title insurance including rules related to:

- (i) rating standards and rating methods for title agencies and producers as provided in

Section 31A-19a-209;

(ii) the licensing for a title licensee including the licensing requirements of Sections 31A-23a-203 and 31A-23a-204;

(iii) continuing education requirements of Section 31A-23a-202;

(iv) examination procedures, after consultation with the department and the department's test administrator when required by Section 31A-23a-204; ~~[and]~~

(v) standards of conduct for a title licensee; and

(vi) with the concurrence of the commission:

(A) identifying the one or more standards of conduct enforceable through a citation;

(B) establishing a fine schedule for a violation of a standard of conduct identified under

Subsection (2)(a)(vi)(A); and

(C) establishing an adjudicative process for a citation in accordance with Title 63,

Chapter 46b, Administrative Procedures Act;

(b) concur in the issuance and renewal of licenses in accordance with Section 31A-23a-105 or 31A-26-203;

(c) in accordance with Section 31A-3-103, establish, with the concurrence of the department, all fees imposed by this title on a title licensee;

(d) in accordance with Section 31A-23a-415 determine, after consulting with the commissioner, the assessment on a title insurer as defined in Section 31A-23a-415;

(e) conduct all administrative hearings not delegated by the commission to an administrative law judge related to the:

(i) licensing or renewing the license of ~~[any]~~ an applicant;

(ii) conduct of any title licensee; or

(iii) approval of continuing education programs required by Section 31A-23a-202;

(f) with the concurrence of the commissioner, approve assets that can be included in a reserve fund required by Section 31A-23a-204;

(g) with the concurrence of the commissioner, approve continuing education programs required by Section 31A-23a-202;

(h) with the concurrence of the commissioner, impose ~~[penalties]~~ a penalty:

(i) under this title related to:

(A) title insurance; or

121 (B) escrow conducted by a title licensee;

122 (ii) after investigation by the department in accordance with Part 3, Procedures and

123 Enforcement; ~~[and]~~

124 (iii) that ~~[are]~~ is enforced by the commissioner; and

125 (iv) for a violation for which a citation is not issued under Section 31A-2-406;

126 (i) advise the commissioner on the administration and enforcement of any ~~[matters]~~

127 matter affecting the title insurance industry, including the prioritizing of enforcement efforts

128 under this title;

129 (j) advise the commissioner on ~~[matters]~~ a matter affecting the department's budget

130 related to title insurance; and

131 (k) perform other duties as provided in this title.

132 (3) The commission may make a rule under this title only if at the time the commission

133 files its proposed rule and rule analysis with the Division of Administrative Rules in

134 accordance with Section 63-46a-4, the commission provides the Real Estate Commission that

135 same information.

136 (4) (a) The commissioner shall ~~[annually]~~ report the information described in

137 Subsection (4)(b) in writing ~~[to]~~:

138 (i) quarterly to the commission; and

139 (ii) annually to the Business and Labor Interim Committee.

140 (b) The information required to be reported under this Subsection (4):

141 (i) may not identify a person; and

142 (ii) shall include:

143 (A) the number of complaints the department receives with regard to transactions

144 involving title insurance or a title licensee during ~~[the calendar year]~~ the time period

145 immediately preceding the report that is applicable to the report;

146 (B) the type of complaints described in Subsection (4)(b)(ii)(A); and

147 (C) for each complaint described in Subsection (4)(b)(ii)(A):

148 (I) any action taken by the department with regard to the complaint; and

149 (II) the time-period beginning the day on which a complaint is made and ending the

150 day on which the department determines it will take no further action with regard to the

151 complaint.

(5) The commissioner shall establish a process for timely informing a complainant of:

(a) the receipt of a complaint;

(b) the completion of the commissioner's activities related to the complaint; and

(c) the result of the complaint if it is a matter of public record.

Section 3. Section **31A-2-406** is enacted to read:

31A-2-406. Letters of warning and citations.

(1) In performing the commissioner's enforcement duties under Section 31A-2-404, in addition to other enforcement authority granted by this title, the commission may issue:

(a) a letter of warning; or

(b) a citation.

(2) A title licensee against whom a citation is issued under this section may:

(a) pay the fine listed in a citation;

(b) seek to resolve the fine through negotiation or a stipulated agreement with the commissioner; or

(c) appear at an adjudicative hearing at the time specified in the citation.

(3) Notwithstanding Title 63, Chapter 46b, Administrative Procedures Act, a letter of warning does not constitute a notice of agency action or an administrative proceeding.

(4) The commissioner shall regularly update the commission on:

(a) trends in and results from the issuance of letters of warning and citations; and

(b) enforcement actions against title licensees that are resolved by stipulated agreement.

Legislative Review Note
as of 2-4-08 1:56 PM

Office of Legislative Research and General Counsel

H.B. 411 - Title and Escrow Commission Act

Fiscal Note

2008 General Session

State of Utah

State Impact

Enactment of this bill will not require additional appropriations.

Individual, Business and/or Local Impact

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for individuals, businesses, or local governments.
